IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No. 71 of 2006
In
COMPANY APPLICATION No. 225 of 2006
With
COMPANY PETITION No. 72 of 2006
In
COMPANY APPLICATION No. 226 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE ANANT S.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RELIANCE INFOCOMM. LTD. - Petitioner(s)
Versus
... - Respondent(s)

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Appearance :
MR S.N.SOPARKAR, LD.SENIOR COUNSEL WITH MRS.SWATI SOPARKAR for Petitioner(s) : 1,
MR PURVISH J MALKAN for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE ANANT S.DAVE

Date : 18/07/2006

ORAL JUDGMENT

1. These are the petitions filed by two petitioner

companies viz. Reliance Infocomm Limited, the Transferor Company and Reliance Communications Infrastructure Limited, the Demerged Company (Collectively referred to as “Petitioner Companies”) seeking sanction of the Scheme of Amalgamation and Arrangement between Reliance Infocomm Limited (RIC), the Transferor Company and Reliance Communications Infrastructure Limited (RCIL), the Demerged Company and Reliance Communications Solutions Private Limited (RCSL) and Reliance Software Solutions Private Limited (RSSPL) and Reliance Communications Technologies Limited (RCTL) and Ambani Enterprises Private Limited (RBM) and Formax Commercial Private Limited (Panther) with Reliance Communications Limited (RC) (formerly known as Reliance Communication Ventures Limited), the Transferee Company and their respective shareholders and creditors under Section 391 read with Section 394 of the Companies Act, 1956.

2. The composite scheme of arrangement also involves amalgamation of seven Mumbai based group companies with the Transferee Company. The Scheme inter alia envisages the following:

(a) Cancellation of fully paid-up Equity Share Capital and Preference share capital of RIC held by RCIL with

effect from January 1, 2006;

(b) Amalgamation of AEPL, RBM, Formax, RCSPL, RCTL and RSSPL with RC with effect from January 1, 2006;

(c) Amalgamation of PCPL with RC with effect from March 1, 2006;

(d) Amalgamation of the RIC with RC with effect from March 31, 2006;

(e) Demerger of the 'Network Division' of RCIL into RC with effect from March 31, 2006 and consequential reorganization of capital in the form of utilisation of its Securities Premium Account.

(f) Re-organisation of Capital and Accounting Treatment in the books of RC and recasting of the Balance Sheet of RIC and RCIL, and

(g) Reduction of securities premium account appearing in the books of RCIL by adjusting the debit balance in Profit and Loss Account and investments in shares of RIC.

3. The proposed amalgamation of RIC, the Transferor Company and the demerger of Network Division of RCIL, the Demerged Company with the Transferee Company is a part of the composite scheme of arrangement as referred above. The Transferee Company and Companies other than RIC and RCIL have their registered offices in Mumbai

and the necessary proceedings have been taken out in the High Court of Mumbai.

4. RIC, the Transferor Company and RCIL, the Demerged Company, are closely held, unlisted companies, having their registered offices in the state of Gujarat and hence seek the sanction of the scheme before this Court.

5. RIC is a fully integrated telecom company offering services that inter-alia covers the entire information and communication value chain of infrastructure, services for enterprises, and consumer applications. RCIL holds IP-1 registration for providing telecommunication infrastructure services such as dark fiber to other telecom service providers in the country. It also holds a Category A-ISP license and also provides internet data centre service to customers. This Company has built an entire optic fibre network crisscrossing the country for a distance of approx.80,000 kms. On the other hand, RC, the Transferee Company is a listed company, presently engaged in the business of managing and controlling telecommunication services.

6. All the companies belong to the same promoter viz. Reliance- Anil Dhirubhai Ambani Group. Accordingly the proposed Scheme inter alia aims to:

(a) Rationalize and simplify the structure of holding/ownership of Infocomm companies of the Reliance-Anil Dhirubhai Ambani Group of companies so that there would be an alignment of interests of all shareholders in a single listed entity viz. RC;

(b) Create synergies by consolidating ownership and achieve a simple and transparent ownership structure for all telecommunications business of the Reliance-Anil Dhirubhai Ambani Group;

(c) Eliminate areas of potential conflict of interest and related party transactions;

(d) Leverage on large asset base, reserves, cash flows, and vast pool of intellectual capital to enhance shareholder value;

(e) Increasing financial strength and flexibility of the Resulting Company and enhance its capabilities to face competition in the market place more effectively;

(f) Securing for the Resulting Company competitive advantage for meeting future growth opportunities, provide greater cost savings and economics and thereby significantly enhancing its earnings potential;

(g) Better and more efficient and economical control

and conduct of companies; and

(h) No cash outgo to RC as the Scheme envisages issuance of its shares in lieu of acquisition of balance controlling interests in the Infocomm companies.

The petitions give complete details of the terms of the proposed scheme of Arrangement.

7. Vide the Orders dated 1st May 2006 passed in the Company Applications no.225 and 226 of 2006, separate meetings of the Equity Shareholders, Preference Shareholders, Secured Creditors and the Unsecured Creditors of the RIC, Transferor Company and Equity Shareholders, Secured Creditors and the Unsecured Creditors of RCIL, the Demerged Company were directed to be convened on 6th June, 2006 and the same were duly convened in accordance with the directions issued and after due notice to the shareholders and creditors. The notices for the meetings were also published in 'Times of India' in English and the other in 'Gujarat Samachar' in Gujarati, both in Ahmedabad edition dtd.13.05.2006. At the respective meetings, convened on 6th June, 2006, the proposed scheme was approved by the requisite statutory majority of the respective shareholders and creditors present at the meetings.

Pursuant to the approval, the Scheme was put for the sanction of the Court vide the present petitions.

8. After the petitions were admitted, the same were duly advertised in the newspapers (“Times of India” in English and the other in “Gujarat Samachar” in Gujarati, both in Ahmedabad edition dt.25th June 2006.) and the publication in the Government gazette was dispensed with as directed in the order dated 13th June 2006.

9. Notice of the Petition was served upon the Official Liquidator for RIC being Co.Pet.No.71 of 2006 as the same is proposed to be dissolved on amalgamation. The report dt.5th July 2006, filed by the Official Liquidator confirms that the affairs of the Company have not been conducted in a manner prejudicial to the interest of its members or to the public interest.

10. Notice of the petition has been served upon the Central Government for both the Petitioner companies and Shri P.J.Malkan, Additional Standing Counsel appear for the Central Government Shri Malkan has placed on record the affidavit dt.11th July 2006 filed by the

Dy.Registrar of Companies along with the letter from the Regional Director dated 10th July 2006 whereby it has been submitted that the Central Govt. has no objection to the proposed scheme and the matter is left to the Hon'ble High Court.

11. The Petitioners have further taken the Contention that the Reduction in capital of RIC and Reorganization of capital of RCIL being proposed as an integral part of the scheme and consequential in nature, the separate compliance of sec.100 to 104 is not required. Vide the orders dt.1st May, 2006, passed in the Co. Applications for both the companies, the same had been specifically granted.

12. However, an affidavit has been filed for the purpose of objecting to the sanction of the scheme by objectors viz. Mr.Ghanshyam Mehta and Mr.Bhavish Mehta.

13. That the scheme at Annexure:-"E" is objected by the plaintiff of Special Civil Suit No.34 of 2001 pending in the Court of learned Civil Judge (S.D.), Rajkot. It is pertinent to note that the above suit was filed against Reliance Telecom Limited, which was subsequently demerged by way of order dtd.16.05.2003

passed in Company Petition No.124 of 2003.

14. According to the objectors in Company Petition of demerger of Reliance Industries Limited, before the High Court of Judicature at Bombay in Company Petition No.735 of 2005 with Company Application No.580 of 2005, the objections raised by the objector was not accepted in view of Reliance Telecom was not held to be a subsidiary of Reliance Industries Ltd. The appeal preferred against the above order is pending before the Division Bench of the Hon'ble High Court of Judicature at Bombay. It is contended that the claim of the plaintiff/objector is to the tune of Rs.50 Crores against the Reliance Telecom Limited and the above claim is on the ground that for laying cables in the lands of the plaintiff and the plaintiff is deprived of thoroughfare for their cattle and bullock carts. That digging of the land is carried out under the guise of false permission obtained from the Government of Gujarat. Thus, by misdeeds of Reliance Telecom Limited and its employees, the plaintiffs have suffered to the tune of Rs.50 Crores.

15. Interalia it is also stated by the objector that they are the creditors, even though decree is not

passed, they are entitled to raise objections. Some objections have been raised about not mentioning the claim of the objectors in the scheme and thus, stakeholders of the company are not apprised of correct facts. Even objections raised about providing proxy form and the proposed scheme did not contain any information with regard to the meeting of the secured creditors as well as unsecured creditors of the company, and therefore the objectors were in a dilemma about such meeting. Thus, there is violation of requirements under Sections 391 to 394 of the Companies Act, 1956. Lastly it is submitted that even objectors were not allowed and permitted to attend the meeting by security personnel and therefore telegram was sent raising the objections.

16. The above objections are raised by filing affidavit and were reiterated by Shri Zubin Bharda, learned advocate appearing for the objectors in his submissions and relied on the decision reported in **1996 87 Company Cases 817** and submitted that while sanctioning the scheme the Court has to x-ray the scheme judiciously and not to act merely as rubber stamp and even if no decree is passed the objector can be said to have a right to raise the objections. Reliance was also placed

on the decision reported in **1935 Company Cases 335** and **AIR 1950 Calcutta High Court 399** in support of his arguments.

17. Learned counsel Shri S.N.Soparkar appearing for the petitioner has referred to salient features of the scheme at Annexure-E and submitted that by an order dtd.06th July, 2006, name of Reliance Communication Limited was permitted to be amended, wherever it appears in the scheme in view of resolution passed by the Reliance Communication Limited on 01.07.2006 and fresh certificate of incorporation, consequently upon change of name granted by the Registrar of Companies, Maharasthra on 07th June, 2006.

18. Learned Counsel Shri S.N.Soparkar appearing for the petitioner has drawn attention of the Court to main objects of the Company to be pursued by the Company on its incorporation about planning, establishing, developing, providing, managing, maintaining, dealing, supplying and taking on lease or taking or giving on lease and to carry on the business running telecommunication infrastructure, telecommunication systems, telecommunication networks and telecommunication services within the country and

outside and also to carry out business of building, developing, maintaining, supplying, operating, managing and dealing in services, facilities and infrastructure for communications of all kinds and also to design, develop, install, provide, supply, deal, franchise and maintain and operate basic long distance services, cellular and otherwise broadband services, Wireless Applications Protocol, ISP services, ISDN services, paging services and other value added services, global mobile telecommunications, electronic mail services, tele-banking, tele-medicine, tele-education, tele-trading, E-commerce, E-governance, E-business etc. and also to co-operation business and to participate in launching of satellites for communications and geographical information systems, applicable positioning systems, etc. It is submitted that for the financial year 2004-05 total income of the petitioner Company was more than Rs.5,000/- Crores and net profit was more than Rs.50 Crores and built up reserves of more than Rs.10,000/- crores.

19. That Part-II of the scheme of amalgamation and arrangement with regard to Reliance Infocom Ltd. is pertaining to cancellation of fully paid up equity share capital and fully paid up preference share

capital of RIC held by RCIL. It is also mentioned that cancellation of the share capital of RIC as mentioned in Clauses 4.1, 4.2, 4.3, 4.4. and 4.5 does not involve a diminution of liability in respect of any unpaid share capital or payment of any share capital of any paid up share capital of RICL being integral part of the scheme in accordance with provisions of Sections 100, 102 and 103 of the Companies Act, 1956. Separate procedure is not necessary to be followed. Part-V is about transfer and vesting of undertaking and Part-VII is about reorganization of capital and accounting treatment and effective provisions are made about legal proceedings which may continue against the Transferee Company.

20. It is submitted that as per order dated 01.05.2006 passed by this Court, the notices were sent individually to the shareholders, secured creditors and the unsecured creditors of the company and the meetings were also advertised in two daily news papers i.e. “Times of India” in English and “Gujarat Samachar” in Gujarati, both in Ahmedabad Editions on 13.05.2006 and for proving publication and service of notices, an affidavit dated 17th May, 2006 is also filed in this regard. So far as result of meeting is reported by the

Chairman by submitting report alongwith the affidavit 08.06.2006 by the Chairman and it is reflected so far as shareholders are concerned, it is approved by 100% both in number and value. So far as secured creditors are concerned, it is also approved by 100% both in number and value and the unsecured creditors of the company was also approved 100% both in number and value. Thus, as required, the scheme is approved by the statutory majority of shareholders, secured creditors and the unsecured creditors.

21. So far as objections of the Objectors are concerned, it is submitted that the objector has no right to raise any objection in view of the fact that no decree is passed in the Civil proceedings pending before the Competent Court having the jurisdiction. It is submitted that even otherwise the alleged false claim of the plaintiff is taken into consideration at this stage, the company has adequate provisions in view of the financial resources available as reflected from the balancesheet produced before this Court. Leaned Counsel has further submitted that no case is pending against the present petitioner company. Even by virtue of scheme of demerger, even if it is presumed that the petitioner company has taken over the objectors'

alleged claim, then the same is bogus, frivolous and not likely to be decreed. It is submitted by relying upon the report of the Chairman as stated in Para:25 of the petition that meeting of unsecured creditor of the petitioner company was attended by 286 creditors and it was noticed that the same was unanimously approved by 100% both in number and value.

22. Even if the present objector had voted against the scheme, the result would have been 99% in number representing 97% in value of the unsecured creditors persons would have voted for the scheme and it would have made no difference particularly when post merger value of assets of Reliance Communication Ltd. the Transferee Company would be far in excess of its' liabilities, comprising of net wealth of approximately Rs.23,000 Crores and cash reserves of approximately Rs.6,000 Crores. Thus, even disclosure about the bogus claim of the objectors, in the notice and the explanatory statement sent to the stakeholders would not have made any difference in the voting pattern. However, it is submitted that even Bombay High Court has also rejected similar objection raised in Company Petition No.735 of 2005 by order dated 09.12.2005. It is further submitted that since Clause-7.2 of the

scheme expressly provides for all debts and liability of the petitioner company to the Transferee Company, the objection of the petitioner does no require worth noticing.

23. Even the objections about providing copy of the scheme and proxy form are also baseless in view of the fact that they were not at all entitled to attend the meeting since the objectors were neither shareholder nor creditors of RCIL.

24. Thus, it was submitted that scheme at Exh.E is in consonance with the parameter laid in case of **Meehir H.Mafatlal Vs.Mafatlal Industries Ltd. reported in (1996) 87 Company Cases 792** and required to be approved.

Thus, all the requirements as envisaged under Sections 391 to 394 of the Companies Act, 1956, have been fulfilled. The learned Counsel has further submitted that there are other decisions of the Apex Court and this Court which follow the principles and the criteria laid down **Miheer Mafatlal's case (Supra)** and the same did not require to be repeated, since the merit of the scheme itself is sufficient to accord sanction by this Court.

However, learned counsel appearing for the petitioner company has submitted that for raising frivolous objections, without any basis, the objectors may be fastened with the liability of paying cost to the petitioners, since the sole object of the objector is to delay the sanction in absence of any merit in the claim lodged before the Competent Court of law at Rajkot.

25. I have carefully gone through the broad features of the scheme, provisions made in that about various aspects and particularly clauses 4.1, 4.2, 4.3, 4.4 and 4.5 are with regard to the cancellation of fully paid up equity share capital and fully paid up preference share capital of RIC held by RCIL and the scheme of reduction with the above proposal of reduction being integral part of scheme in accordance with provisions of Sections 100, 102 and 103 of the Act and it does not involve either diminution of liability in respect of unpaid share capital or payment to any share holder of any paid up share capital. The provisions of Section 101 of the Act need not require to be followed again while following the same procedure.

Even order dated 01.05.2006 passed in Company Application No.225 of 2006 by the learned Company Judge

had dispensed with calling upon all the meetings with regard to the reduction of share capital and following the procedures laid down in Section 101(2) of the Companies Act, 1956 and Rules 48 to 65 of Company (Court) Rules, 1959 in view of the above proposal being an integral part of the scheme.

26. It is clearly established from the report of the Chairman annexed with the petition that the companies have fulfilled all the requirements envisaged in Sections 391 to 394 of the Companies Act, 1956 and the resolutions approving the scheme have been passed by the required statutory majority and it is 100%, both in number and value in case of shareholders, secured creditors and the unsecured creditors. Thus, the companies seeking sanction of the scheme at Annexure:E to the petition have fulfilled all criteria laid down in case of Miheer Mafatlal (Supra) and other cases including the **40 Company Cases Page-871** in the case of **Maneckchowk And Ahmedabad Manufacturing Co. Ltd.**

27. The objectors' claim of Rs.50 Crores about depriving their bullock carts and animals thoroughfare by the RIL is concerned, the matter is pending before the Court of learned Senior Division at Rajkot and therefore it is

not worth making any comment on merit. It is clearly established that the objectors are neither shareholders nor the creditors and therefore, not entitled to raise their objections in approval of the present scheme. Even similar contentions raised before the High Court of Judicature at Bombay were negatived by order dated 10th December, 2005.

28. It is equally true that even mentioning of the so-called claim of the objectors in the scheme would not have made any difference to the decisions of the shareholders, secured creditors and the unsecured creditors in view of passing resolutions by 100% in number and value by the stakeholders.

That in the scheme itself, the provisions are made in Para:12 of Part:VIII about legal proceedings, by which Transferee Company has undertaken to have all legal or other proceedings initiated by or against the Transferor Companies, and therefore, the objections of the objector about their claim becoming infructuous have no merits.

29. That other objections about not following the procedure for convening the meeting and perusal o providing adequate opportunity to the objectors in the

meeting, the report of the Chairman which is placed on record by affidavit established that as required under Sections 391 to 394 of the Companies Act, 1956 procedure is followed by the company.

30. That objection about the claim pending against Reliance Telecommunication Ltd. before Competent Court of law at Rajkot, and all the assets and liabilities of 'Basic telephone services' Division of RTL, is taken over by the petitioner company by virtue of scheme of arrangement approved by this Court on 16th May, 2003, it is born out from the record that RTL is an independent operating company and continues in existence, so that objector can continue and pursue their alleged claim against RTL, which is not a party to the scheme.

31. That even the objections of the objectors raised against the demerger of Reliance Industries Ltd. before the High Court of Judicature at Bombay being Company Petition No.735 of 2005 are also not accepted in the order dated 09.12.2005 passed by the High Court Judicature at Bombay. Thus, even in the present case, objections do not stand on merit and scheme deserves sanction by this Court.

32. Thus, it is established from the fact that objections raised by the objectors, though the objectors are not creditors of the petitioner company and are not entitled to have any say in the affairs or business of the company or can be permitted to raise any objections to the scheme for total non-existence debt. No substance is found by this Court to the objections raised by the objectors and even the authorities relied upon by the learned counsel appearing for the objectors have no applicability in the facts of the present case.

33. Besides, the report of the Official Liquidator dtd.05th July, 2006 reveals that affairs of the company have not been conducted in a manner prejudicial to the interest of the members of the companies or to the public interest based on the report of the Chartered Accountant appointed pursuant to the order passed by this Court. That even affidavit filed by Deputy Registrar of Companies, Ahmedabad, authorized by the Regional Director, Western Zone, dated 11.07.2006 and the letter dated 10.07.2006 produced thereof also reveal that departments of company affairs have no objection to the scheme if sanction accorded by this Court.

34. Thus, it is established for the financial year 2004-05, total income of the petitioner company was more than Rs.5,000/- Crores and net profit was more than Rs.50/- Crores with built up reserve of more than Rs.10,000/- Crores, the claim of the objectors of Rs.50/- Crores for which adjudication is yet to take place in Competent Court of law do not bar this Court from according sanction to the scheme at Annexure:-'E'.

35. Thus, the scheme at Annexure:-'E' is just,bona-fide, fair, reasonable and in the interest of stakeholders and also in public interest which requires sanctioned by this Court.

36. The scheme at Annexure:-'E' is hereby sanctioned and the scheme as sanctioned by this Court shall be binding to the shareholders, secured creditors, unsecured creditors and all concerned. These petitions are allowed accordingly.

37.The fees of the learned Assistant Solicitor General of India is quantified at Rs.3500/-to be paid by the petitioner-company.

amit (ANANT S.DAVE, J.)